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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-eighth session
Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Working paper on the promotion and protection of human rights by the exercise of democracy and the establishment of a democratic society, submitted by Mr. Osman El-Hajjé in accordance with Sub-Commission decision 1995/116

Introduction

1. By its decision 1995/116 of 24 August 1995, the Sub-Commission, having taken into consideration the oral statement on the subject made by Mr. Osman El-Hajjé, decided to request Mr. El-Hajjé to prepare a working paper on democracy and the establishment of a democratic society, to be submitted to it at its forty-eighth session. The present document is submitted pursuant to that mandate.

GE.96-12836 (E)

A. Sources

2. Reference should be made to the numerous writings of jurists, political scientists and sociologists of the various geographical regions of the world, as well as to the following documents, proceedings, conferences and resolutions:

(a) United Nations:

(i) General Assembly:

Resolution 49/30 of 7 December 1994 and resolution 50/133 of 20 December 1995, both entitled "Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies";

(ii) Commission on Human Rights:

Resolution 1995/60 of 7 March 1995;

Report of the Working Group on the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (E/CN.4/1996/97);

(iii) Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in June 1993 (A/CONF.157/23);

(iv) Report of the Secretary-General of 7 August 1995 entitled "Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies" (A/50/332);

(b) Specific conferences:

(i) International Conference of Newly Restored Democracies, held at Manila from 3 to 6 June 1988, and its Declaration (A/43/538, annex);

(ii) Second International Conference of New or Restored Democracies, held at Managua from 4 to 6 July 1994, and its Declaration (A/49/713, annex);

(iii) Third International Conference of New or Restored Democracies, scheduled for 1997 at Bucharest.

B. Method of work

3. Since an outline of the study was provided at the previous session (E/CN.4/Sub.2/1995/49), the author hopes that this working paper can be

considered in plenary during the present session in order that a rapporteur can be appointed this year with a view to submitting a preliminary report at the forty-ninth session as the basis on which the Sub-Commission might take a final decision concerning the main lines of the study to be carried out.

4. It is important to emphasize first of all that in order to complete this task, and with a view to maintaining a human rights perspective and keeping the research at the right distance from political problems, the author would give priority to analysing the provisions of the international human rights instruments (Universal Declaration, covenants, conventions and other declarations).

5. In that connection, it would be appropriate to consider how the international instruments have addressed the question of democracy and the establishment of a democratic society and, consequently, the extent of the powers granted to man for the safeguarding, protection and development of his acknowledged rights.

6. It would also be appropriate to examine how those powers, if they exist, have been reflected in the legislation and incorporated into the public and private institutions of States, in order to identify any gaps and propose solutions.

7. It is perhaps worth recalling that a study on democracy and the establishment of a democratic society, especially within the framework of the Sub-Commission and of the Commission on Human Rights, will not be meaningful or useful, even in theoretical terms, unless it aims to define the citizen's place and role in maintaining and defending democracy because, in the final analysis, we are seeking to consolidate his acknowledged rights and if democratic society can provide us with the appropriate framework for attaining that objective, then we must define the contours of that society.

8. To that end, the study will consider the experiences of various countries of the five regional groups with a view to distinguishing the basic principles and points of reference which could lead to a consensus on the core characteristics of a democratic society. For the countries of the world have not all evolved at the same rhythm or with the same intensity, so that what is essential for one people may be important, but not vital, for another.

9. The study could be expanded to consider the practice of the international organizations and non-governmental organizations if the Sub-Commission so wishes. The experience of these institutions is very recent and might constitute an important area for thought and analysis.

10. By thinking in terms of concrete cases, we should be able to avoid the danger of conducting research on the basis of conceptual postulates that are not recognized by a large number of States and that would not permit us to reconstitute the reality of democracy as it is practised by different peoples.

11. This approach means focusing on the facts, which would certainly lead us to question and compare our observations in order to distinguish a number of generally accepted principles.

12. The method adopted involves taking into consideration the internal and international environment, and consequently the framework within which democracy is exercised. Therefore, the rapporteur will pay all due attention to the most significant historical, economic, cultural, social and legal factors capable of shaping or influencing the practice of democracy and the establishment of a democratic society.

C. Aim of the work

13. The increasing complexity of social phenomena, the diversified knowledge accumulated by mankind, the need for protection of both individuals and groups, the aspiration for distributive social justice and the constraints, sometimes very painful, of economic development mean that human beings want at any price to be masters of their destiny and to that end participate fully in affairs that concern them directly or indirectly by sharing with their fellow citizens, in equality and each according to his means, the burdens that result therefrom. Hence, it becomes a matter of urgency to concretize the unanimously recognized rule laying down the equality of human beings before the law and the rule of law which democratic society is considered to be the most able to realize.

14. Indeed, past and contemporary history offers many illustrations of the fact that while a State can be founded by one man or one family, in the broad sense, its continued existence necessitates the adhesion of the members of society, in their majority, to the options and rules established by the new State. Yet such adhesion can be assured only if the members enjoy equal rights before the law. Those rights must be determined and protected and

their violation made punishable by institutions which use procedures that are simple and easily understood by the average man and which furnish the safeguards of impartiality, competence and transparency that are realized in a democratic society.

15. Men aspire to enjoy the rights which are recognized as human rights in societies other than their own and which are naturally theirs as human beings capable of thought and expression. The facilities for members of the same society or of different human societies to acquire information, communicate and conceive common plans, and the removal of hindrances to the exchange of information between human beings are indispensable for the protection, consolidation and promotion of their rights. Indeed, the process of informing, inquiring about and knowing one another is essential to eliminating all kinds of discrimination and dogmas that do not contribute to the protection of human rights, since only a major reason, which must be determined and defined in advance, should permit any limitation of the enjoyment and exercise of those rights.

16. It is unacceptable that man, that extraordinary being who never ceases to push back the bounds of the possible and to postpone his fate as a mortal in the quest for eternity, should be deprived of his capacities to express himself freely, to translate his thoughts into living facts and to associate himself with his fellows to become stronger, resist the adversity that assails him and continue to work towards an objective that is imprinted in his chromosomes and genes and that can only be the common good of humanity, an endeavour that brings him closer to his Creator.

17. Thus, any discrimination between human beings which is based on colour, language, religion or race can only be rejected as contrary to the rule of equal rights. Likewise, it is inadmissible that some men should command others, without valid or acknowledged reason and without their prior consent, by means of coercion, force, with its multiple facets, or intrigues.

18. Yet while it is necessary for human beings in society to be divided into the rulers and the ruled for the good administration of their affairs, it is no less essential, for the observance of the rule of equality and also for the sake of efficiency, that rulers and holders of elective office should submit themselves at regular intervals to the test of electoral competition and to the judgement of the ruled in order to prevent the establishment of acquired

or permanent positions. The drawback is that this contest introduces a feeling of precariousness encouraging the incumbent, unconscious of the risk, to resort to dilatory or even immoral, and often illegal, means either to put off the election day or else to cancel the election completely. How can that to be remedied? Notwithstanding this drawback, the contest has advantages because it stimulates the candidate and incites him to apply greater effort and ingenuity knowing that, in the final analysis, he is working in the common interest. None the less, one of the great challenges is to persuade the men who are in the position of rulers to accept the verdict of the ballot-box without fear or misgivings and gracefully agree to become the ruled again. Another challenge is to persuade those who are ruled that the ballot-box is an effective tool for defending their rights, bringing their plans to completion, ridding themselves of rulers who are incompetent or unable to cope with difficult situations, and ultimately for becoming rulers themselves. Consequently, any use of violence needlessly complicates the rules of the game and could cause the elections to be delayed by giving alibis for anyone to deny the mutual recognition of rights. How can this mutual recognition be achieved? That is one of the objectives set for this work.

19. By increasing the opportunities offered to people in the labour market through the diversification of productive activities and the possibilities of material and spiritual enrichment, economic development reduces the tensions between social groups and promotes dialogue and consultation, and hence mutual respect. It increases the production of wealth and the reserves available for consumption and distribution both domestically and abroad. It employs people in research, production and marketing and can thus be seen as indispensable in compensating for the precariousness of elective office by offering people other interesting activities to engage in if they are not re-elected, thereby removing the dramatic and tragic aspect of an election defeat. In this sense, economic development seems to be an indispensable complement to the effective exercise of human rights and an objective to be attained for their full enjoyment. However, the question that may be asked is whether we must wait for such development or whether the precondition is to respect and safeguard human rights? In point of fact, this is a false dilemma because while economic development permits better exercise and total enjoyment of human rights, it cannot be used as an argument by the State to limit or violate

those rights. Nevertheless, it is undeniable that different countries do not all have the same level of economic development and consequently cannot offer the same guarantees of protection of those rights or provide their citizens with the same facilities for their exercise.

20. Since democracy and the establishment of a democratic society is the objective of the study, it should therefore determine the constituent elements and identify the obstacles to achieving that objective. In that connection, it might propose the establishment of a formal structure for the exchange of information among States in the field of democracy and for training to resolve and overcome the conflicts which arise in a democratic society, since dialogue may not produce solutions when the situation demands.

21. The study might serve as an expert appraisal, technical assistance and reference document for Governments, international organizations, non-governmental organizations and all persons working for the promotion of a democratic society. Thus, it would be appropriate to decide what initiative it should propose and how it should be carried out:

(a) Standard-setting initiatives, i.e. guidelines, a declaration or a resolution;

(b) The institution of a special procedure (working group or special rapporteur).

D. Content of the report

22. The report might focus on three main themes:

(i) What are the characteristic elements of a democratic society? In this regard, it would be useful to ask whether democracy can be uniform, whatever the socio-economic and cultural environment, or whether it is impossible for it to escape the internal and international contingencies that impose the colours and distinguishing marks of history upon it;

(ii) What are the obstacles and hindrances to the exercise of democracy? There are many possible kinds: legislative, administrative, sociological, economic, cultural, religious, historical and others brought about by the influence of the external situation;

(iii) The steps to be taken and the procedures to be applied to establish a democratic society. In this regard, the experiences undergone by various peoples will constitute points of preference to guide the

report. However, a number of preconditions should be respected. These include the setting up of institutions and the training of people to ensure the observance of the law.

1. The characteristics of a democratic society

23. Any democratic system comprises actors, standards of conduct and instruments to resolve the various kinds of disputes that are bound to arise between the actors and to interpret the rules. Lastly, what influence is exerted by the economic organization of a country?

(a) The actors

24. The actors in a democratic society include men and women, public and private institutions, and the media.

Men and women: what is their place and role, and under what conditions and procedures can their rights and freedoms be extended or limited, suspended or revoked?

The public institutions: these are the instruments by means of which the various powers express themselves, order and shape society as a whole. How are the institutions formed, run and dissolved? What are the basic institutions of a democratic society?

Parliament: who can become a member and how? Elections: what is their meaning and significance? Confidence and equality. The choice of parliamentarians: the need for a procedure based on competition; formal with two or more candidates; real or the expression of a conceptual pluralism; cooptation; nomination or designation by fiat.

The judicial branch: importance of independence, integrity and competence; safeguards.

The executive branch - product of the majority: dominant party or alliance of parties; what is the place and role of the minority? The political minority; the cultural, religious or linguistic minority.

The institution of the military: what is its place and role? Number of military personnel and mode of recruitment; the cost of its operation and maintenance.

Centralization and decentralization of the public institutions and protection of human rights.

The private institutions: a visible expression of free enterprise and freedom of action of men and women and a necessity of social life;

intermediaries between the public institutions and people, and tools for defending and protecting their rights and freedoms; they substitute for the public institutions, offsetting their deficiencies and shortcomings in satisfying human needs.

The media: as means of providing information, they must be clear, simple, exact, numerous and independent; as a tool for training and educating, they must help to smooth over the contradictions within society; the dangers of a monopoly of the media by the State, a political party or a social or occupational group.

(b) The standards

25. Democratic society lives by rules which it issues to ensure its development and continued existence. The actors therefore act according to its rules, which specify their rights and duties. The standards must be abstract and general, but also obligatory. How are these standards elaborated, applied and modified or abrogated? Can these standards come into conflict with international human rights standards? And how should any such disputes be resolved?

(c) Decision-making and dispute resolution

26. The elaboration, promulgation and application of standards give rise to polemics, confrontation and disputes, which may end in deadlock necessitating recourse to a neutral specialist body or to a judicial or political body. It is thus important to make sure that a decision is preceded by dialogue and consultation among the interested parties, which implies an obligation to inform as fully as possible. The decision will be taken by a majority or even by consensus. The law will determine the various kinds of decisions and how they should be adopted. In the event of deadlock before a decision is taken: recourse to specialist bodies, whose role is limited to removing difficulties and proposing solutions; after a decision is taken: judicial remedy or political remedy to settle a dispute brought about by the decision.

(d) Relationship between the organization of the economy and democracy

27. The organization of a country's economy determines the behaviour of human beings and institutions. The question is how far it influences the exercise of democracy. In this regard, the study will examine:

The impact of the right to private ownership of the means of production;

The consequences of State intervention to correct social inequality and restore equal opportunities for men and women;

Compatibility of the centralization of a country's wealth in the hands of a minority or of the State;

Social exclusion and the practice of democracy.

28. A country's economic underdevelopment and the desire to overcome it and make up lost time, provide the opportunity for the political authorities to solicit greater effort and sacrifice. It is therefore tempting to confound underdevelopment with a situation of emergency, threat, unrest or war to limit or even revoke rights and freedoms, on the pretext of accelerating or enhancing the development process. Is such an attitude consistent with a democratic society? Citizens must retain the freedom and rights necessary to scrutinize Government plans, make comments, ask questions and propose changes and amendments or even reject the plans completely. Arguments based on ignorance or incompetence are aimed fundamentally at masking authoritarianism and disregard of citizens by averting dialogue, discussion and consultation.

2. Obstacles and hindrances to the exercise of democracy

29. There are many such obstacles and it is easier to class them by the nature of the subject:

Obstacles which derive from a country's history: history creates habits and bonds of solidarity which may engender practices and behaviour that substitute the concepts of clans and tribes or others for the concept of citizens and rights and duties;

Legislative obstacles: a country's legislation may be frankly inegalitarian under various pretexts, especially religious, ethnic or linguistic;

Administrative obstacles: these are typified by the concentration of power in a country's capital or in one region, removing other citizens from the centre of decision-making;

Psychological obstacles: democracy is the sign of movement and change, which bring fear of the future and induce people to cling to what are considered to be well-established positions; this is the result of a lag in cultural level within a country's population;

A dominant position of the army or other components of society in making and implementing decisions.

3. Steps to be taken to establish a democratic society

30. All steps and initiatives must, as far as possible, come at the same time:

Recognition of citizens' rights and fundamental freedoms;

Creation of a variety of institutions enabling people to become familiar with the exercise of rights and freedoms;

Sensitization of the public from school onwards to the ideas of tolerance and to solving disputes through dialogue and consultation;

Creation of institutions of solidarity to bring a country's inhabitants closer together and to eliminate social exclusion;

Bring social groups closer together by reassuring the minorities and encouraging the culture of human rights;

Elimination from the legislation of any privilege or rule that discriminates on grounds other than merit or performance;

Encouragement of public festivities, celebrations and rejoicing which unite the largest possible number of members of the population;

Establishment of institutions to which a country's inhabitants can have recourse in cases of violation of their rights or deadlock in efforts to find a solution to a dispute;

Ensure the independence of the legislative, executive and judicial branches by delimiting their powers and setting up monitoring institutions throughout the country.

31. To conclude, the study might consider and explore, at the philosophical and ethical level, the question of democratic society as a peaceful means of resolving disputes and enabling human society to develop with all due respect for human rights as they are set forth in the Universal Declaration of Human Rights and the other covenants and conventions.

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Item 5 (a) of the provisional agenda

ELIMINATION OF RACIAL DISCRIMINATION

MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUB-COMMISSION

Note by the Secretariat

In connection with the consideration of item 5 (a) of the provisional agenda, the following reports submitted to the Commission on Human Rights at its fifty-second session are being made available to the Sub-Commission: the report of Mr. Glèglè-Ahanhanzo, Special Rapporteur of the Commission on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/1996/72 and Add.1) and the report of the Secretary-General on the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (E/CN.4/1996/71 and Add.1).

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Item 6 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Note by the Secretary-General

1. At its forty-seventh session, the Sub-Commission adopted resolution 1995/18, entitled "Situation of human rights in the Islamic Republic of Iran", in which it requested the Secretary-General to continue to keep the Sub-Commission informed of relevant reports and United Nations measures to prevent human rights violations in the Islamic Republic of Iran, including, in particular, those concerning the situation of the Kurds and the Arab minority and the religious freedoms and the emancipation of the Baha'i and Christian communities in Iran.

2. In compliance with this request, the attention of the Sub-Commission is drawn to the interim report which the Special Representative on the Situation of Human Rights in the Islamic Republic of Iran, Mr. Maurice Copithorne, submitted to the General Assembly at its fiftieth session (A/50/661, annex).

3. On 22 December 1995, the General Assembly adopted resolution 50/188, entitled "Situation of human rights in the Islamic Republic of Iran".

4. The Special Representative submitted his final report to the Commission on Human Rights at its fifty-second session (E/CN.4/1996/59).

5. At its fifty-second session, the Commission on Human Rights also had before it reports by the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1996/38), and by the Special Rapporteurs on extrajudicial, summary or arbitrary executions (E/CN.4/1996/4), on the question of torture (E/CN.4/1996/35 and Add.1), on freedom of opinion and expression (E/CN.4/1996/39 and Add.2) and on religious intolerance (E/CN.4/1996/95 and Add.2), which refer to the situation of human rights in the Islamic Republic of Iran within the terms of their respective mandates.

6. On 24 April 1996, the Commission on Human Rights adopted resolution 1996/84 entitled "Situation of human rights in the Islamic Republic of Iran". The Commission decided to extend the mandate of the Special Representative, as contained in Commission resolution 1984/54 of 14 March 1984, for a further year, and requested him to submit an interim report to the General Assembly at its fifty-first session on the situation of human rights in the Islamic Republic of Iran, including the situation of minority groups such as the Baha'is, and to report to the Commission at its fifty-third session.

7. The attention of the Sub-Commission is also drawn to the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/43/CRP.1/Add.9), and the Committee on Economic, Social and Cultural Rights (E/C.12/1993/7), and the comments of the Human Rights Committee (CCPR/C/79/Add.25) on reports submitted by the Islamic Republic of Iran under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, and under article 40 of the International Covenant on Civil and Political Rights, respectively.

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Item 8 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to adequate housing

Note by the Secretariat

1. On 24 August 1995, at its forty-seventh session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted, without a vote, resolution 1995/27 in which it firmly endorsed the specific recommendations contained in chapter VIII of the final report of the Special Rapporteur on the right to adequate housing, Mr. Rajindar Sachar (E/CN.4/Sub.2/1995/12).

2. The Commission on Human Rights, at its fifty-second session in its resolution 1996/11 of 11 April 1996 on the question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights, recognized the interest of the final report on the right to adequate housing submitted by Mr. Sachar.

Activities undertaken with respect to the right to adequate housing

3. In its resolution 1995/27, the Sub-Commission requested the United Nations High Commissioner for Human Rights "fully to incorporate activities directly relevant to the human right to adequate housing in his mandate, with a view to preventing violations of this right and generally promoting the realization of the right to adequate housing to the maximum extent possible".

4. In this regard, the Secretary-General would like to draw the attention of the Sub-Commission to the expert group meeting on the human right to adequate housing, convened in preparation for the United Nations Conference on Human Settlements (Habitat II). The meeting took place in Geneva from 18 to 19 January 1996. It was organized in response to resolution 15/2 of 1 May 1995 of the Commission on Human Settlements by which it requested the Executive Director of Habitat to undertake, in consultation with other relevant United Nations bodies, a further examination and update of his report entitled "Towards a housing rights strategy: practical contributions by UNCHS (Habitat) on promoting, ensuring and protecting the full realization of the human right to adequate housing" (HS/C/15/2/Add.2), taking into consideration the legal, social, economic, political and practical aspects of the subject and the views and concerns expressed by some member States, including those regarding the existence and/or legal status of the right to adequate housing. Pursuant to this resolution, the United Nations Centre for Human Settlements (Habitat) and the United Nations Centre for Human Rights decided to jointly organize an expert group meeting which would further examine the various aspects of the right to adequate housing.

5. In his opening statement at the expert group meeting, the United Nations High Commissioner for Human Rights referred to the extensive work of the human rights bodies and mechanisms dealing with the right to adequate housing. A representative of the United Nations Centre for Human Settlements recalled that the goal of housing for all was a central mandate of UNCHS and of the community of nations, as reflected in the Global Strategy for Shelter to the Year 2000 (General Assembly resolution 43/181 of 20 December 1988).

6. In its conclusions and recommendations, the expert group meeting noted with respect to the human right to adequate housing the following:

(a) The formulation "right to housing" is used clearly and unambiguously in the International Convention on the Elimination of All Forms of Racial Discrimination which is binding on close to 150 States parties;

(b) The view that while there is a right to an adequate standard of living there is no separate right to adequate housing has, to the knowledge of the experts, never previously been made in any United Nations forum either in relation to this right or to the right to adequate food or the right to adequate clothing, the status of which would be equally affected;

(c) No State party to the relevant Covenant has ever disputed the consistent use by the Committee on Economic, Social and Cultural Rights of the terminology according to which the right to adequate housing has always been treated as a separate and distinct right;

(d) The wording used in the relevant Covenant would, according to accepted canons of interpretation, result in the logical conclusion that the right to adequate housing exists, whether as part of a broader "umbrella" right or separately; in either case it is necessary to treat the right as having a distinct existence.

7. The expert group meeting also took note of the very extensive recognition accorded to the right to housing, again by the use of sometimes slightly varying formulations, in the context of a range of important international statements of law and policy.

8. The expert group meeting also noted that a significant number of national constitutions from all regions of the world accord explicit recognition to the right to housing. Legislation in many countries also recognizes central elements of that right such as the right to protection from forced evictions, the right to be free from racial and other forms of discrimination in relation to housing, the right to security of tenure, the right of tenants and other dwellers to organize freely, the right to preferential access to housing for vulnerable groups and the right to judicial remedies for violations of these rights.

9. The expert group meeting discussed the question of the appropriate role of the State in relation to the implementation of the right to adequate housing. The right does, however, imply certain obligations for the State. Among the core areas of the State role in realizing the human right to adequate housing are provision of security of tenure, prevention (reduction) of discrimination in the housing sphere, prevention of illegal and mass evictions, elimination of homelessness and promotion of participatory processes for individuals and families in need of housing. In specific cases, the State may have to provide direct assistance, including provision of housing units, to people affected by disasters (natural and man-made) and to the most vulnerable groups of the society. It noted that this right should not be interpreted as implying, inter alia, (a) that the State is required to build housing for the entire population; (b) that housing is to be provided free of charge by the State to all who request it; or (c) that the State must necessarily fulfil immediately all aspects of this right.

10. The expert group meeting considered that there is a pressing need for additional attention to be given to the elaboration of the normative content of the right to adequate housing and to measures which should be taken to implement, or give operational effect to, the right.

11. While the expert group meeting recognized the usefulness of such instruments, it considered that the drafting of a binding legal instrument such as a convention would more appropriately be considered at a later stage in the overall process. The expert group meeting considered that priority should be accorded to the preparation of principles and standard rules dealing with the practical implementation of the different aspects of the human right to adequate housing at the national level. It called upon the United Nations Centre for Human Settlements to take whatever measures are requested in order to begin a process of consultation and drafting with a view to producing such documents.

12. The expert group meeting agreed, furthermore, on the need to develop criteria for measuring progress towards the realization of the human right to adequate housing and for the strengthening of existing United Nations organizations and bodies in the development and promotion of this right. It was also agreed that the mechanisms for protecting this right and dealing with its violations should be strengthened.

13. The expert group meeting urged the United Nations Centre for Human Settlements to continue the constructive cooperation with the Centre for Human Rights by convening a meeting between the members of the Committee on Economic, Social and Cultural Rights and representatives of the United Nations Centre for Human Settlements with a view to identifying further measures that might be taken.

14. The expert group meeting also urged the Centre for Human Rights to develop a model advisory services programme which would give interested States an indication of the types of technical cooperation which could be made available to them in the context of the right to adequate housing.

Fourth World Conference on Women

15. Reference to the right to adequate housing was also made at the Fourth World Conference on Women, held in Beijing from 4 to 15 September 1995. Paragraph 31 of the Programme for Action (A/CONF.177/20, chap.I, annex II) reads:

> "Many women face particular barriers because of various diverse factors in addition to their gender. Often these diverse factors isolate or marginalize such women. They are, inter alia, denied their human rights, they lack access or are denied access to education and vocational training, employment, housing and economic self-sufficiency and they are excluded from decision-making processes. Such women are often denied the opportunity to contribute to their communities as part of the mainstream."

Technical cooperation in the field of human rights

16. The World Conference on Human Rights in 1993 reaffirmed that "all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis". Accordingly, the programme of advisory services and technical cooperation in the field of human rights makes no functional distinction, and recognizes no hierarchy, vis-à-vis various sets of rights. Thus, all programme elements give due attention to economic, social and cultural rights, including the right to adequate housing.

17. As it has evolved over the past 40 years, the programme's focus is on strengthening national capacities to protect human rights through strong institutions, laws and policies. In this context, economic, social and cultural rights are addressed throughout the programme's activities, in each of the geographic areas in which it operates, with each of the target groups which it addresses, and on an equal footing with civil and political rights. These rights inform all stages of programme development, formulation, implementation, monitoring, evaluation and follow-up. Thus, for example, references to economic and social conditions are included in country profiles and needs assessments, recommendations for the increased realization of these rights are included in projects and activities for implementation, and the impact of such interventions is assessed in periodic and post-project evaluations.

Habitat II

18. In compliance with paragraph 6 of Sub-Commission resolution 1995/27 the Assistant Secretary-General for Human Rights addressed a letter to the Secretary-General of Habitat II in which he transmitted the Sub-Commission's recommendation to the Preparatory Committee for Habitat II "to take full account in its agenda, plan of action and final declaration of the views of the Special Rapporteur on the right to adequate housing, including those contained in his final report, and all other ongoing activities of the United Nations concerning housing rights, and to undertake explicitly identified activities with regard to the human right to adequate housing within and beyond the context of Habitat II".

19. The High Commissioner for Human Rights, the Assistant Secretary-General for Human Rights and the focal point of the Centre for Human Rights for Habitat II participated in the Second United Nations Conference on Human Settlements, which took place in Istanbul from 3 to 14 June 1996.

20. The High Commissioner for Human Rights, in his statement before the plenary meeting, informed the international community on the human rights aspects of the issue of housing, based on existing human rights instruments. He said that the right to adequate housing had been recognized since the adoption of the Universal Declaration of Human Rights in 1948 and enumerated the activities of the human rights treaty bodies and mechanisms dealing with that right.

21. The High Commissioner chaired a round table on "The human right to adequate housing", which was attended by experts in this field who discussed the legal dimensions of this right and the issue of arbitrary or forced evictions, as it related to the right to adequate housing.

22. Pursuant to General Assembly resolution 50/157, the Centre for Human Rights organized a ceremony during the Conference in order to celebrate and reflect upon the International Decade of the World's Indigenous People (1995-2004). The Assistant Secretary-General for Human Rights, in his capacity as Coordinator of the Decade, made an introductory statement in the plenary meeting and many delegations participated in the debate. In this context, a round table was also organized on "Indigenous people, shelter and land", chaired by the Assistant Secretary-General for Human Rights, with the participation of experts in this field.

23. The focal point of the Centre for Human Rights for Habitat II participated in the hearings of Committee II concerning the participation of the organizations of the United Nations system in the strategy for implementing the Habitat Agenda. In a presentation made on behalf of the High Commissioner for Human Rights/Centre for Human Rights, it was stated that, taking into account that all human rights were universal, indivisible and interdependent and interrelated, the right to adequate housing had been integrated into ongoing human rights activities. These activities were elaborated and proposals were made for the implementation of the strategies relating to human rights, as contained in the Plan of Action of the Habitat

Agenda, taking into account the coordinating role of the High Commissioner for Human Rights. The presentation was followed by a "dialogue", in which questions were put by member States and answers provided accordingly.

24. Most of the proposals and comments made by the High Commissioner for Human Rights/Centre for Human Rights on the right to adequate housing were incorporated in the final document of the Habitat II Conference.

25. At the Habitat II Conference member States reached consensus on the issue of the right to adequate housing, reaffirming their commitment "to promote, protect and ensure the full and progressive realization of the right to adequate housing".

26. A reference copy of the final document of the Habitat II Conference can be made available to the members of the Sub-Commission if it is issued before the end of the current session.

Publication of the final report of the Special Rapporteur

27. The final report of the Special Rapporteur on the right to adequate housing has been published as number 7 of the Human Rights Study Series in all the official languages of the United Nations.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Guidelines on international events and forced evictions

Report of the Secretary-General

1. In its resolution 1995/29 the Sub-Commission on Prevention of Discrimination and Protection of Minorities, reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity, recognizing that the practice of forced evictions involves the involuntary removal of persons, families and groups from their homes and communities, resulting in greater homelessness and inadequate housing and living conditions, and aware that forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a range of actors, strongly urged Governments to undertake immediately measures, at all levels, aimed at rapidly eliminating the practice of forced eviction through, inter alia, immediately renouncing existing plans involving forced evictions, repealing legislation allowing forced evictions and ensuring the right to security of tenure to all citizens and other residents. It decided to consider the issue of forced evictions at its forty-eighth session under the agenda item entitled "The realization of economic, social and cultural rights" and to determine how most effectively to continue its consideration of the issue.

2. In paragraph 10 of the same resolution, the Sub-Commission requested the Secretary-General to submit an updated report at its forty-eighth session.

3. In the same resolution, the Sub-Commission also requested the Secretary-General to convene an expert seminar on the practice of forced

eviction and the relationship of this practice to internationally recognized human rights, with a view to developing comprehensive human rights guidelines on development-based displacement.

4. In this context, at its fifty-second session, on 11 April 1996, the Commission on Human Rights, in its decision 1996/104, taking note of Sub-Commission resolution 1995/29 of 24 August 1995, bearing in mind the work of other United Nations bodies on this issue, notably that of the United Nations Centre on Human Settlements (Habitat), and mindful of the need to avoid unnecessary duplication, decided to recommend to the Economic and Social Council, in the light of the conclusions of the United Nations Conference on Human Settlements (Habitat II), to be held in Istanbul in June 1996, to authorize the holding of an expert seminar on the practice of forced evictions with a view to developing comprehensive human rights guidelines on development-based displacement.

5. The present report should be seen as supplementing the analytical report compiled by the Secretary-General pursuant to Commission on Human Rights resolution 1993/77 (E/CN.4/1994/20), and the report of the Secretary-General submitted to the Sub-Commission at its forty-seventh session (E/CN.4/Sub.2/1995/13).

Forced eviction

6. In its resolution 1995/29, the Sub-Commission identified the practice of forced evictions as involving "the coerced and involuntary removal of persons, families and groups from their homes, lands and communities, whether or not deemed legal under prevailing systems of law, resulting in greater homelessness and inadequate housing and living conditions". It is also important that both the Sub-Commission and the Commission have recognized and affirmed that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing. In addition, the elimination of the practice of forced evictions is of central importance to the full enjoyment by everyone of economic, social and cultural rights.

7. Forced evictions can always be attributed directly to decisions, legislation or policies explicitly pursued by States or to the failure of States to intervene in halting forced evictions by third parties. Besides, virtually all instances of forced evictions are planned, formulated, and often announced prior to being carried out. However, forced evictions can, under certain circumstances and subject to specific conditions, be consistent with international human rights standards. Such evictions can be classified as "legal evictions". This distinction, however, must be interpreted in a very narrow sense. As a means of distinguishing evictions which are consistent with legal norms and those which are not, terms such as "arbitrary evictions", "illegal evictions", and "unfair evictions" are often utilized.

8. The causes of forced evictions are very diverse. The practice can be carried out in connection with development and infrastructure projects, in particular dams and other energy projects, land acquisition or expropriation, housing or land reclamation measures, hallmark international events (Olympic Games, World's Fairs, etc.), in the context of unrestrained land or housing speculation, housing renovation, urban redevelopment or city beautification

initiatives and mass relocation or resettlement programmes. When evictions do occur, there is a tendency to seek to justify them on the basis of broad generalizations by declaring, for example, that they are "inevitable", "unavoidable", a "necessary price for progress", or required in order to promote "development".

9. The World Summit for Social Development, held in Copenhagen in March 1995, clearly showed that "sustainable development" should be seen in a much broader sense than in economic terms alone. Paragraph 6 of the Copenhagen Declaration on Social Development (A/CONF.166/9, chap. I, resolution I, annex I) reads:

> "We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. Equitable social development that recognizes empowering the poor to utilize environmental resources sustainably is a necessary foundation for sustainable development. We also recognize that broad-based and sustained economic growth in the context of sustainable development is necessary to sustain social development and social justice".

10. The World Summit acknowledges "that people are at the centre of [the] concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with the environment" (para. 8).

11. Moreover, the heads of State and Government committed themselves to

> "a political, economic, ethical and spiritual vision for social development that is based on human dignity, human rights, equality, respect, peace, democracy, mutual responsibility and cooperation, and full respect for the various religious and ethical values and cultural backgrounds of people. Accordingly, [they] will give the highest priority in natural, regional and international policies and actions to the promotion of social progress, justice and the betterment of the human condition, based on full participation by all" (para. 25).

12. Furthermore, they agreed (para. 26) to create a framework for action created to:

> "(a) Place people at the centre of development and direct [their] economies to meet human needs more effectively;
>
> "...
>
> "(i) Ensure that disadvantaged and vulnerable persons and groups are included in social development, and that society acknowledges and responds to the consequences of disability by securing the legal rights of the individual and by making the physical and social environment accessible;
>
> "...

"(1) Support progress and security for people and communities whereby every member of society is enabled to satisfy his or her basic human needs and to realize his or her personal dignity, safety and creativity."

Consequences of forced eviction

13. Though some types of forced evictions may be unavoidable, the human costs of forced evictions are so extensive that any justification for eviction must be analysed within a human rights framework. Women, children and youth, indigenous peoples, ethnic, racial, religious or other minorities, low-income social groups, populations living under occupation and those without the legal security of tenure tend to suffer disproportionately from the practice of forced eviction. In cases where evictions are unavoidable, an obligation would exist on the part of the proponents of eviction to take measures to compensate the victims, so as to reduce the adverse consequences to a minimum.

14. The human costs of forced evictions are indeed substantial and can involve a wide range of additional negative impacts upon the lives and livelihood of those affected, including: exacerbating individual and social impoverishment, including homelessness and the growth of new slums; physical, psychological and emotional trauma; insecurity for the future; physical hardship and the onset of illness; substantially higher transportation costs; loss of livelihood and traditional lands; worse housing conditions; physical injury or death resulting from the use of arbitrary violence; the removal of children from school; arrest or imprisonment of those opposing an eviction; loss of faith by victims in the legal and political system; reduction of low-income housing stock; racial segregation; loss of culturally significant sites; the confiscation of personal goods and property; substantially higher housing costs; absence of choice for alternative accommodation; criminalizing self-help housing options; increased social isolation; and tension with existing dwellers at resettlement sites.

15. In the words of the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Mr. Theo van Boven, in his final report (E/CN.4/Sub.2/1993/8, para. 21), "the issue of forced removals and forced evictions has in recent years reached the international human rights agenda because it is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities".

Legal protection and guidelines

16. With respect to the legal protection of possible victims and the guidelines on international events and forced evictions, it is important to keep in mind the findings of the Secretary-General's analytical report (E/CN.4/1994/20) and his report to the Sub-Commission at its forty-seventh session (E/CN.4/Sub.2/1995/13). The aspects discussed below can be added. However, it should be made clear that developing guidelines on forced evictions can only be a partial solution. They are important, but should not be allowed to be used as a rationale for encouraging the eviction process, nor viewed as a panacea for addressing the human rights component of the practice. If pursued faithfully and realistically by Governments,

international agencies and others, guidelines can discourage and deter the eviction process and can assist in finding real alternatives to this continuing violation of the human right to adequate housing.

17. Good location of the relocation site is one of the most critical aspects because location is the key to access to income-earning opportunities. Most failures in relocation and resettlement are linked to poor location, and it is very difficult to overcome this problem through income-generation programmes.

18. When relocation is unavoidable, a relocation/resettlement plan should be prepared and implemented which allocates sufficient resources to ensure that those affected are fairly compensated and rehabilitated. They should benefit from the development process on a sustainable basis. At a minimum, they should not be worse off than before relocation.

19. The parties benefiting from the development causing the relocation should pay the full costs of the relocation process including the socio-economic rehabilitation of the relocatees to at least their former level. It is important that this principle is made clear, preferably through the legal system and supporting institutions, so that it can be incorporated in financial assessments.

20. Eviction impact statements may also contribute to the protection of the potential victims, the reduction of social tension and the mitigation of the dislocation of the inhabitants. Under such a procedure, permission to remove occupants from any given site will not be granted unless such a statement, prepared by persons or organs fully independent of the actor requesting the eviction, is provided to the competent authorities, and if the statement does not clearly indicate that the target community will be adequately protected.

21. Compensation of assets and rehabilitation. Compensation refers to what the owner of property receives when it is compulsorily acquired by the Government. Rehabilitation refers to measures to re-establish those displaced. This goes beyond cash compensation. It involves active replacement of housing and income-generating possibilities. It can be applied to those without legal title to land, whereas compensation may often be limited to those with legal title.

22. The Commission on Human Rights, in its resolution 1993/77, recommended that "all Governments [should] provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups". Moreover, enabling legislation is required to provide for fair compensation to the affected population and must specify regulations for the valuation of lost assets. Legislation should provide for compensation through the substitution of the lost asset by another of comparable productive capacity. Besides this, it should be the responsibility of the actor requesting the relocation, that relocatees have adequate access to social services such as education and health care in the new site. Compensation should be made at replacement cost and prior to moving. Such

legislation concerning compensation would complement the legislation and related domestic remedies required to be put in place to protect persons affected by eviction.

23. Finally, the role of non-governmental organizations in the prevention and elimination of the practice of forced evictions must be underlined. Their role is one of great importance and should be strongly promoted. Their involvement as intermediaries between policy makers and affected persons for the mutual benefit of all actors involved, and especially to defend the interests of the victims, must be stressed. Well-informed non-governmental organizations may help to obtain political support and to alert public opinion to deter planned forced evictions, and they may assist in the resettlement, as their role is often crucial in the relocation process. In addition, people often do not know what their rights and options are in situations of looming forced eviction, and NGOs can give legal and professional assistance.

24. The members of the Sub-Commission are invited to consider the present report, with a view to proposing further elements that could enhance the drafting of guidelines on international events and forced evictions for the consideration of the Sub-Commission at its forty-ninth session.

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